

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

11 THOMAS DAVIDSON, et al.,  
12 Plaintiffs,  
13 v.  
14 APPLE, INC.,  
15 Defendant.

Case No. 16-CV-04942-LHK

**ORDER APPOINTING INTERIM LEAD  
CLASS COUNSEL AND INTERIM  
LIAISON CLASS COUNSEL**

Re: Dkt. No. 25, 45

16  
17 On August 27, 2016, Plaintiffs filed a class action complaint against Defendant Apple, Inc.  
18 (“Defendant”) asserting claims relating to an alleged defect in Defendant’s iPhone touchscreens.  
19 See ECF No. 1. On October 13, 2016, Plaintiffs filed a motion for the appointment of interim  
20 class counsel. ECF No. 25 (“Pl. Mot”). On December 9, 2016, Plaintiffs filed a supplemental  
21 brief in support of their motion to appoint interim class counsel. ECF No. 45 (“Supp. Br.”).  
22 Defendant does not oppose Plaintiffs’ motion. Pursuant to Civil Local Rule 7-1(b), the Court  
23 finds this matter suitable for resolution without oral argument and VACATES the motion hearing  
24 set for January 12, 2017, at 12:30 p.m. The case management conference scheduled for that date  
25 and time remains as set. After consideration of Plaintiffs’ motion, supplemental brief, and the  
26 record in this case, the Court hereby appoints McCune Wright Arevalo, LLP (“McCune Wright”)  
27 as interim lead class counsel, and Larson O’Brien, LLP (“Larson O’Brien”), as interim liaison

28

1 class counsel.

2 “The court may designate interim counsel to act on behalf of a putative class before  
3 determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). “Instances  
4 in which interim class counsel is appointed are those in which overlapping, duplicative, or  
5 competing class suits are pending before a court, so that appointment of interim counsel is  
6 necessary to protect the interests of class members.” *White v. TransUnion, LLC*, 239 F.R.D. 681,  
7 683 (C.D. Cal. 2006) (citing Manual for Complex Litigation § 21.11 (4th ed. 2004)). The Court  
8 finds appointment of interim lead class counsel and interim liaison class counsel appropriate here.  
9 As Plaintiffs represent, prior to filing the instant action, McCune Wright was contacted by several  
10 law firms interested in pursuing a class action lawsuit against Defendant related to defects in  
11 Defendant’s touchscreen. Pl. Mot. at 2–4. Moreover, in addition to the instant action, a similar  
12 action was filed in the United States District Court for the District of Utah by the law firm  
13 Christensen Young & Associates on behalf of Utah plaintiffs. Supp. Br. at 3. After discussions,  
14 the attorneys for Plaintiffs and Christensen Young & Associates agreed to add the Utah class  
15 representatives to this action and dismiss the Utah action. *Id.* Thus, because multiple law firms  
16 have already been involved in this case and because there have been competing class action suits  
17 filed, the Court finds that “designation of interim counsel [will] clarif[y] responsibility for  
18 protecting the interests of the class during precertification activities” and best serve the interests of  
19 the class members. *Michelle v. Arctic Zero, Inc.*, 2013 WL 791145, at \*2 (S.D. Cal. Mar. 1, 2013)  
20 (internal quotation marks omitted).

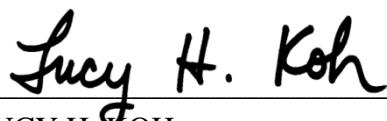
21 “[C]ourts look to Rule 23(g)(1) factors to appoint interim class counsel.” *Id.* Under Rule  
22 23(g)(1), the court must consider “(i) the work counsel has done in identifying or investigating  
23 potential claims in the action; (ii) counsel’s experience in handling class actions, other complex  
24 litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable  
25 law; and (iv) the resources that counsel will commit to representing the class,” and may consider  
26 “any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of  
27 the class.”

1        After considering these factors, the Court appoints McCune Wright as interim lead class  
2        counsel, and Larson O'Brien as interim liaison class counsel. McCune Wright is experienced in  
3        class action litigation, including class actions that, like the instant case, involve product defects.  
4        *See* Pl. Mot. at 11 (listing representative matters). Moreover, in this case, McCune Wright has  
5        investigated the potential class action claims, consulted with experts, drafted the first amended  
6        complaint, and taken a leadership role among the law firms involved in this action. *See id.* at 13;  
7        *see also Paraggua v. LinkedIn Corp.*, 2012 WL 3763889, at \*2 (N.D. Cal. Aug. 29, 2012) (finding  
8        similar actions by a law firm sufficient to qualify the law firm for interim class counsel). Further,  
9        the Court finds that the proposed interim liaison class counsel, Larson O'Brien, has similar  
10      qualifications and experience. *See* Pl. Mot. at 14–15. Additionally, as stated above, Defendant  
11      does not oppose Plaintiffs' motion.

12        Accordingly, Plaintiffs' motion to appoint interim lead class counsel and interim liaison  
13      class counsel is GRANTED. Consistent with Plaintiff's motion and supplemental brief, McCune  
14      Wright and Larson O'Brien shall be generally responsible for coordinating the activities of  
15      Plaintiffs during pretrial proceedings and will delegate work to the other plaintiffs' firms involved  
16      in this case only when needed. *See* Supp. Br. at 3–4. The Court hereby ORDERS Plaintiffs'  
17      counsel and their staff, consultants, and experts to maintain contemporaneous billing records of all  
18      time spent litigating this case. By "contemporaneous," the Court means that an individual's time  
19      spent on a particular activity should be recorded no later than seven days after that activity  
20      occurred. McCune Wright shall designate one attorney to review and approve timekeeping and  
21      bills each month and to strike any duplicative or unreasonable fees and costs. *See id.* at 4.  
22      McCune Wright shall designate such attorney at the January 12, 2017 case management  
23      conference.

24      **IT IS SO ORDERED.**

25      Dated: December 23, 2016

  
\_\_\_\_\_  
LUCY H. KOH  
United States District Judge